No. 11972

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

CURTIS COURANT,

Appellant,

vs.

INTERNATIONAL PHOTOGRAPHERS OF THE MOTION PICTURE INDUSTRY LOCAL 659, ETC., *et al.*,

Appellees.

OPENING BRIEF OF APPELLANT.

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Preliminary Statement.

The appellant filed a civil action for damages in the Federal District Court against the appellee unions and their representatives. The appellant alleged that he came to this country in 1941, with twenty years' experience as a first cameraman in the motion picture business. The complaint states that from the date of his arrival to the time of the filing of the complaint, April 6, 1948, the first cameramen in the industry, acting through their exclusive bargaining representatives under the National Labor Relations Act, prevented appellant from working because of non-membership in their unions, and at the same time refused to admit him to membership. Appellant further alleged that from 1941 until 1947 the unions would not act favorably upon his applications for membership because

he was not a citizen; from 1947, when he became a citizen, until the filing of this action, the unions turned down his applications, saying that no more first cameramen would be admitted to the unions. Ever since January, 1943, while the appellee unions acted as exclusive bargaining representatives, they refused to permit appellant to work (except on three occasions) although appellant had continuous offers of employment. The appellant alleged that the motion picture industry, in which he had been offered employment, affected interstate commerce within the meaning of the National Labor Relations Act [Tr. 2-16, 23]. The claim of appellant is founded on his right, under Section 7 of the National Labor Relations Act, to join labor organizations and on the duties of appellee unions to appellant, as the exclusive bargaining representatives of all camermen under Section 9 of the same act.

The appellee unions filed motions to dismiss for lack of jurisdiction [Tr. 17-21] and after Opinion [Tr. 24-27] the District Court rendered its Judgment of Dismissal for lack of jurisdiction [Tr. 28-29].

The sole question presented by the appeal in this case is whether or not a Federal Court should determine the rights, if any, of the appellant under the Constitution of the United States, the National Labor Relations Act, the Polish Treaty, and the other statutes hereinafter referred to. In other words, has the appellant, under his pleadings, raised a substantial question as to whether or not he has any protection under Federal law which would require the Federal District Court to decide either for or against him, under the provisions of the Federal Constitution and statutes upon which he relies. This Court need not decide what those rights are, but merely direct the District Court to adjudicate the questions.

We quote from Paragraph I of appellant's complaint as amended, which sets forth the grounds of Federal jurisdiction:

> "Jurisdiction is founded on the existence of a Federal question and the amount in controversy, and on the existence of a question arising under the United States Constitution, Treaty and under particular Federal statutes.
>
> "The action arises under the Constitution of the United States, Article 1, Section 8, Article 6, the Fifth Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States; the National Labor Relations Act, 29 U. S. C. A. 151-166, enacted July 5, 1935; Labor Management [2] Relations Act of 1947, 29 U. S. C. A. 141-197, enacted June 23, 1947; the Treaty between the United States and Poland of Friendship, Commerce and Consular Rights, 48 Stat. L. 1507; 28 U. S. C. A. 41 (1, 8, 12, 13, 14, 17, 23); 8 U. S. C. A. 41, 43, under color of Sections 921-923 Labor Code, State of California, and the laws of the State of California, 8 U. S. C. A. 47, 48; 15 U. S. C. A. 15; the matter exceeds, exclusive of interest and costs, the sum or value of $3,000.00; the Preamble and Articles 1, 2, 55 and 56 of the United Nations Charter (59 Stat. L. 1046)." [Tr. 2-3, 23.]*

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*Effective September 1, 1948, Title 28 of United States Code was revised and the sections of that title above referred to are renumbered as follows:

Title 28, 41 (Old)	Title 28 (New)
1	1331
8	1337
12	1343
13	1343
14	1343
17	1350
23	1337

The express provisions of the Federal law relied upon are set forth in the Appendix as follows:

Statement of the Case.

We are not concerned in this case with the relative rights and duties of unions as they may have existed prior to the National Labor Relations Act of 1935. Until 1935, so far as the Federal Government was concerned, labor unions were left relatively free to gain what strength they might in a "dog eat dog" fight with employers. The employer had the advantage of discharging a union employee as soon as he wore his union badge, refusing to negotiate with representatives of the employees, obtaining "yellow dog" contracts, and with the use of labor spies the employer could effectively crush the unionization of his employees. All of these practices became unlawful under the National Labor Relations Act of 1935, and under that Act the Federal Government gave a direct grant of power to employees and their labor unions.

The basic grants of power to employees follow from the preamble to the National Labor Relations Act of 1935 (Section 1), set forth in Appendix B at page 2 The preamble found that individual employees did not "possess full freedom of association or actual liberty of contract" and that "protection by law of the rights of employees to organize and bargain collectively" safeguards commerce; to eliminate obstructions to commerce it was necessary to protect "the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing." Section 7 of the National Labor Relations Act of 1935 (Appendix B, p. 3) guaranteed the following rights to employees:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to

> bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Under Section 9 (a) (Appendix B, p. 3) of the Act representatives designated or selected by the majority of the employees are the exclusive representatives of all employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. Employees are also given the right to enter into a closed shop contract with the employer under the provisions of Section 8 (3) (Appendix B, p. 3).

Under these provisions of the National Labor Relations Act the employee is given the right to designate representatives of his own choosing and these representatives when selected by a majority have exclusive bargaining rights for all members of the class to set the terms and conditions of work. The rights and duties of such a representative have been analyzed and construed by the United States Supreme Court on a number of occasions and, as a result, certain principles have been established which govern the duties of representatives both under the National Labor Relations Act and the Railroad Labor Act, which has comparable provisions. One of those is the principle that powers exercised by the unions are congressionally clothed and comparable to a legislative body. The opinion of Mr. Chief Justice Stone in *Steele v. Louisville and N. R. Co.,* 323 U. S. 192, 65 S. Ct. 226, states:

> "Congress has seen fit to clothe the bargaining representatives with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, *cf.* J. I. Case

Co. v. National Labor Relations Board, *supra,* 321 U. S. 335, 64 S. Ct. 579, but it has also imposed on the representative a corresponding duty."

Steele v. Louisville and N. R. Co., 323 U. S. 192, 202, 65 S. Ct. 226, 232.

Another principle established is that the exclusive bargaining agency is the agent of all members of the class whether or not they are members of the bargaining union.

"The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially."

Wallace Corp. v. N. L. R. B., 323 U. S. 248, 255, 65 S. Ct. 238, 241-242.

The union, as bargaining agent, has duties comparable to that of a trustee in its relation to all members of the class which it represents.

"It is to be noted that the seniority rights of Whirls were bargained away from him by a union which, under the National Labor Relations Act, was entitled to bargain as his representative. The Act makes the majority union 'the exclusive representatives of all the employees in such unit' for bargaining. 49 Stat. 453, Sec. 9 (a), 29 U. S. C., Sec. 159 (a), 29 U. S. C. A.

"Sec. 159 (a). We have held that this not only precludes the individual from being represented by others but also prevents him from bargaining for himself. *J. I. Case Co. v. National Labor Relations*

Board, 321 U. S. 332, 64 S. Ct. 576, 88 L. Ed. 762. While the individual is thus placed wholly in the power of the union, it does not follow that union powers have no limit. Courts from time immemorial have held that those who undertake to act for others are held to good faith and fair dealing and may not favor themselves at the cost of those they have assumed to represent. The National Labor Relations Act, in authorizing union organizations 'for the purpose of collective bargaining or other mutual aid or protection,' 49 Stat. 452, Sec. 7, 29 U. S. C., Sec. 157, 29 U. S. C. A., Sec. 157, indicates no purpose to excuse unions from these wholesome principles of trusteeship."

Trailmobile Co. v. Whirls, 331 U. S. 40, 67-68, 67 S. Ct. 982, 995, 996 (dissenting opinion of Mr. Justice Jackson).

The only question of law which appears in the decision of the District Judge [Tr. 24-27] is whether the right of the appellant as against the appellees flows to him directly from Section 7 of the National Labor Relations Act of 1935, and under the statutory duties of the union as the exclusive bargaining representative, or whether he claims under some derivative or secondary right as was involved in *Schatte v. International Alliance,* 70 Fed. Supp. 1008, affirmed C. C. A. 9, 165 F. 2d 216 (writ of certiorari denied by Supreme Court). In the *Schatte Case* the plaintiff claimed under a contract which had been entered into pursuant to the National Labor Relations Act, while in this case the appellant has no rights whatsoever if those rights are not given him directly by the National Labor Relations Act; in fact he is claiming rights under the National Labor Relations Act *in the face of* a closed shop contract entered into by the appellee unions.

It is the claim of the appellant that he had offers of employment in the motion picture industry and, in certain instances, was employed by that industry; that appellee unions, although his exclusive bargaining agent under the statute, not only refused to admit him to membership, arbitrarily and without reason, but also refused to permit him to work. Therefore, the appellant says that under the decisions of the Supreme Court of the United States, to be referred to in detail, the unions violated his rights under the National Labor Relations Act by refusing to represent him, refusing to treat him on an equal basis with all other first cameramen in the bargaining unit, refusing to permit him to enter into an individual contract and performing work thereunder, and discriminated against him as his unwilling representative on wages, hours and conditions of employment.

If Congress can clothe a union with exclusive bargaining powers, and a union acting under such powers can by the closed shop contract and refusal to permit qualified persons to membership, prevent employees from contracting for hire, however qualified, then grave constitutional questions arise as to the National Labor Relations Act.

There are many questions of law and interpretations of statutes involved in this case which will be alluded to at a later point in this brief; however, the primary question revolves around the National Labor Relations Act of 1935 and other questions are secondary.

Appellant claims damages for the years beginning 1943 to the date of the filing of the complaint, April 6, 1948, and during most of that period the National Labor Relations Act of 1935 was in force and effect; appellant further alleges that prior to the effective date of the Labor

Management Relations Act of 1947, the appellee unions entered into a closed shop contract which will not expire until December 31, 1948. This closed shop contract is lawful under the Labor Management Relations Act of 1947. Because most of the period concerned is covered by the Act of 1935, and because of the legality of the closed shop contract even under the Labor Management Relations Act of 1947, primary consideration is given to the construction and effect of the 1935 Act, although, so far as venue is concerned, Section 301 (c) of the 1947 Act is set forth in Appendix H, page 18.

Statement of Facts.

The appellant filed his complaint for damages against the appellee unions, International Alliance of Theatrical Stage Employees, etc. ("IATSE"), and International Photographers of the Motion Picture Industry, Local 659 ("Local 659"), and Herbert Aller, its Business Representative. The District Court granted the motions of the appellees to dismiss for lack of jurisdiction and entered its judgment of dismissal for lack of jurisdiction [Tr. 28-29]. For the purposes of considering the propriety of the action of the District Court all of the facts properly pleaded in the complaint are admitted to be true, and therefore we will review these facts in this light.

Appellant alleges that the appellee IATSE and its local unions are labor organizations acting as exclusive bargaining representatives for all employees in the motion picture industry in the State of California who do work in connection with the filming of scenes of motion pictures, including all labor incidental thereto, and who do all preparation, cutting and development of exposed film for shipment into interstate commerce; that Local 659 is a labor

organization composed of first cameramen, and is a local union of the IATSE; that Local 659 represents all first cameramen in the motion picture industry in the State of California and that all employers engaged in the production of motion pictures within such State are under contract with Local 659 for a term ending December 31, 1948, whereby no person may be employed as a first cameraman without membership in Local 659. The complaint also points out that a labor dispute between Local 659 and the employers would burden and obstruct interstate commerce [Tr. 3-8].

The complaint alleges that the majority of exposed film and value of products are produced within the State of California, matters which are of common knowledge, and that the majority of employees are engaged by producers for an individual motion picture, including members of Local 659 [Tr. 9].

Appellant was born in Europe in a portion of the German Empire which subsequently became within the sovereignty of the Republic of Poland, and plaintiff entered the United States under the Polish quota in May of 1941. In July of that same year he filed his declaration of intention to become a citizen and, on the 11th of July, 1947, became a citizen of the United States of America. Appellant, with twenty years' experience, came to this country with an international reputation as first camerman and this reputation was well known among employers, directors, actors and actresses in the motion picture industry within the State of California. The American Society of Cinemaphotographers, an independent union, was, up until the end of 1942, the exclusive bargaining representa-

tive of first cameramen, and during that period appellant was unable to obtain membership in that labor organization, as well as unable to work as a result [Tr. 9-10].

Ever since January of 1942, plaintiff has applied for membership in Local 659, doing all things required thereunder for membership, and ever since that date Local 659 has arbitrarily and without reason refused him membership, and refused to permit appellant to work as first cameraman for any employer engaged in the production of motion pictures within the State of California. Ever since January 1, 1943, Local 659 has not admitted to membership any first cameraman, although many qualified persons have applied for membership [Tr. 9-11].

During the period that appellant was an alien he was denied membership in the union because of the By-Law of the IATSE that no person who was not a citizen of the United States or Canada could be admitted to membership; after appellant became a citizen the By-Laws of Local 659 provided that no first cameraman should be admitted to the union [Tr. 12-13].

Appellant has continuously, ever since he entered the United States, been offered employment as first cameraman, but, nevertheless, appellees refused to permit him to work with the exception of three motion pictures, and then under conditions that appellant could not look into the camera, touch the camera, nor give any order or direction to the camera crew, and with the additional requirement that appellant's employer hire an extra union first cameraman [Tr. 13-14].

The remaining allegations concern the damages to the appellant [Tr. 15-16].

Appellees moved to dismiss the complaint on the ground of lack of jurisdiction [Tr. 17-21]; the District Judge rendered his decision based on the conclusion that the case was covered by *Schatte v. International Alliance,* 70 Fed. Supp. 1008, affirmed C. C. A. 9, 165 F. 2d 216 (writ of certiorari denied by the Supreme Court) [Tr. 24-27], and rendered his judgment of dismissal for lack of jurisdiction [Tr. 28-29]; the appellant appealed from such final judgment [Tr. 29].

The question is thus squarely presented as to whether or not an alien entering the United States under the protection of a Polish Treaty (Appendix C, p. 4), and subsequently becoming a citizen of the United States of America, has any right to be heard in the Federal Courts when, although he has offers of employment and has been employed in the industry, is prevented from working either with or without a union membership by the exclusive bargaining agency acting under a grant of power from the Congress of the United States, a nation not only bound by its constitutional provisions (Appendix A, p. 1), but also by the Charter of the United Nations (Appendix D, p. 8).

ERROR NO. 1.

The District Court Erred in Rendering a Judgment of Dismissal for Lack of Jurisdiction.

POINTS OF LAW.

I.

The District Court Has Jurisdiction of the Action Under the National Labor Relations Act, the Treaty With Poland, the United Nations Charter and the Express Provisions of the Judicial Code.

A. The Rights of Appellant and Duties of Appellees Under the National Labor Relations Act of 1935.

Appellant claims the basic right guaranteed under Section 7 of the National Labor Relations Act (Appendix B, p. 3) to "join * * * labor organizations" and to "bargain collectively" through representatives of his own choosing; appellant also claims that appellee unions have the duty as appellant's statutory representative under the National Labor Relations Act to represent him with the same fidelity as other first cameramen and under the National Labor Relations Act to either admit him to membership or permit him to enter into contracts of hire without obstruction. It is the position of appellant that appellee unions by refusing him membership and refusing to permit him to work have violated the duties imposed by the National Labor Relations Act and should respond in damages.

The appellees are acting under a congressional grant of power as the exclusive bargaining agency for all first cameramen, and with such a power they have duties similar to that of a legislature, agent and trustee to act toward appellant without discrimination to the end that he may freely work at his chosen trade.

Steele v. Louisville and N. R. Co., 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173;

Tunstall v. Brotherhood of Locomotive Firemen, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187;

Wallace Corp. v. N. L. R. B., 323 U. S. 248, 65 S. Ct. 238, 89 L. Ed. 216;

Brotherhood of Locomotive Firemen v. Tunstall (C. C. A. 4), 163 F. 2d 289;

Graham v. Southern Ry. Co., 74 Fed. Supp. 663;

Betts v. Easley, 161 Kan. 459, 169 P. 2d 831, 166 A. L. R. 342;

James v. Marinship, 25 Cal. 2d 721, 155 P. 2d 329, 160 A. L. R. 900;

Williams v. International Brotherhood, 27 Cal. 2d 586, 165 P. 2d 903;

International Union v. J. I. Case Co., 250 Wis. 63, 26 N. W. 2d 305, 170 A. L. R. 933.

In *Steele v. Louisville and N. R. Co., supra,* the union acted as the exclusive bargaining representative for all employees and made an agreement with the employer that only white employees should be promoted to the better position of fireman or assigned to new runs. The petitioner, a negro, filed a complaint in the State Court and the trial court sustained a demurrer which was affirmed by the Supreme Court of the State. The Supreme Court of the United States reversed the judgment of the State Court and held that the union as exclusive bargaining representative under the Railway Labor Act had a duty to represent all employees whether members or not, and could not arbitrarily discriminate against any member of the group it represented, saying that the union as exclusive bargaining representative had powers not unlike a legislature and therefore was prohibited from discriminating

against anyone for whom it legislates, and that it has a duty to protect the minority of a craft. The Court in the course of its opinion stated:

> "If, as the state court has held, the Act confers this power on the bargaining representative of a craft or class of employees without any commensurate statutory duty toward its members, constitutional questions arise. For the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights. If the Railway Labor Act purports to impose on petitioner and the other Negro members of the craft the legal duty to comply with the terms of a contract whereby the representative has discriminatorily restricted their employment for the benefit and advantage of the Brotherhood's own members, we must decide the constitutional questions which petitioner raises in his pleading.
>
> "But we think that Congress, in enacting the Railway Labor Act and authorizing a labor union, chosen by a majority of a craft, to represent the craft, did not intend to confer plenary power upon the union to sacrifice, for the benefit of its members, rights of the minority of the craft, without imposing on it any duty to protect the minority.
>
> * * * * * * * *
>
> "Unless the labor union representing a craft owes some duty to represent non-union members of the craft, at least to the extent of not discriminating against them as such in the contracts which it makes as their representative, the minority would be left

with no means of protecting their interests, or indeed, their right to earn a livelihood by pursuing the occupation in which they are employed.

"While the majority of the craft chooses the bargaining representative, when chosen it represents, as the Act by its terms makes plain, the craft or class, and not the majority. The fair interpretation of the statutory language is that the organization chosen to represent a craft is to represent all its members, the majority as well as the minority, and it is to act for and not against those whom it represents. It is a principle of general application that the exercise of a granted power to act in behalf of others involves the assumption toward them of a duty to exercise the power in their interest and behalf, and that such a grant of power will not be deemed to dispense with all duty toward those for whom it is exercised unless so expressed.

"We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, *cf. J. I. Case Co. v. National Labor Relations Board, supra,* 321 U. S. 335, 64 S. Ct. 579, but it has also imposed on the representative a corresponding duty. We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly

the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them.

* * * * * * * *

"So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft. While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith."

Steele v. Louisville and N. R. Co., 323 U. S. 192, 198, 199, 201, 202, 203, 204, 65 S. Ct. 226, 230, 231, 232, 233, 89 L. Ed. 173.

The facts in *Tunstall v. Brotherhood of Locomotive Firemen, supra,* were similar to *Steele v. Louisville and N. R. Co., supra,* except that in the *Tunstall Case* the action was filed in the Federal District Court instead of the State Court. The United States Supreme Court held that the duty imposed by the Railway Labor Act was a Federal right over which the Federal Courts had jurisdiction under 28 U. S. C. A. 41 (8).

"We also hold that the right asserted by petitioner which is derived from the duty imposed by the Railway Labor Act on the Brotherhood, as bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the

Brotherhood's conduct. 'The extent and nature of the legal consequences of this condemnation though left by the statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted.' *Deitrick v. Greaney,* 309 U. S. 190, 200, 201, 60 S. Ct. 480, 484, 485, 84 L. Ed. 1036; *Board of Com'rs of Jackson County v. United States,* 308 U. S. 343, 60 S. Ct. 285, 84 L. Ed. 313; *Sola Electric Co. v. Jefferson Electric Co.,* 317 U. S. 173, 176, 177, 63 S. Ct. 172, 173, 174, 87 L. Ed. 165; *cf. Clearfield Trust Co. v. United States,* 318 U. S. 363, 63 S. Ct. 573, 87 L. Ed. 838. The case is therefore one arising under a law regulating commerce of which the federal courts are given jurisdiction by 28 U. S. C. §41(8), 28 U. S. C. A. §41(8), Judicial Code §24(8); * * *"

Tunstall v. Brotherhood of Locomotive Firemen, 323 U. S. 210, 213, 65 S. Ct. 235, 237, 89 L. Ed. 187.

In *Wallace Corp. v. N. L. R. B., supra,* one union was certified by the National Labor Relations Board as the exclusive bargaining agency for all employees, and thereupon signed a closed shop contract with the employer, making a demand on the employer that members of the other union who had lost the Board election be discharged. The employer thereupon discharged such employees knowing that they were being excluded from membership in the certified union because of their previous membership in the losing union. The order of the National Labor Relations Board requiring reinstatement of such employees was affirmed by the United States Supreme Court in an opinion by Mr. Justice Black, who said:

"The duties of a bargaining agent selected under the terms of the Act extend beyond the mere repre-

sentation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially. Otherwise, employees who are not members of a selected union at the time it is chosen by the majority would be left without adequate representation. No employee can be deprived of his employment because of his prior affiliation with any particular union. The Labor Relations Act was designed to wipe out such discrimination in industrial relations. Numerous decisions of this Court dealing with the Act have established beyond doubt that workers shall not be discriminatorily discharged because of their affiliation with a union. We do not construe the provision authorizing a closed shop contract as indicating an intention on the part of Congress to authorize a majority of workers and a company, as in the instant case, to penalize minority groups of workers by depriving them of that full freedom of association and self-organization which it was the prime purpose of the Act to protect for all workers."

Wallace Corp. v. N. L. R. B., 323 U. S. 248, 255, 256, 65 S. Ct. 238, 241, 242, 89 L. Ed. 216.

After the United States Supreme Court decided *Tunstall v. Brotherhood of Locomotive Firemen, supra,* it was remanded to the District Court, which granted to the plaintiff damages against the union (69 Fed. Supp. 826), and upon appeal the judgment was affirmed, the Court saying:

"It is argued that the Brotherhood may not be held liable for damages because it was given a discretion with respect to bargaining and because it is a non-profit organization. No authority is cited to sustain this proposition, and we know of none. No reason

occurs to us why an organization which has used its power as bargaining agent in violation of the rights of those for whom it undertakes to bargain, and has thereby inflicted injury upon one of those whom it professes to represent, should not respond in damages for the injury so inflicted. If liability were thought to be a subject of doubt in such case, we might find helpful analogy in the cases which hold to accountability an agent who has violated the duty which he owes those for whom he acts or in the cases which establish liability for interference with contract. It is not necessary, however, to go to these, as the Supreme Court in the *Steele case, supra,* has definitely ruled that such liability exists. See 323 U. S. at page 207, 65 S. Ct. 226, 89 L. Ed. 173."

Brotherhood of Locomotive Firemen v. Tunstall (C. C. A. 4), 163 F. 2d 289, 293.

In *Graham v. Southern Ry. Co., supra,* members of the negro race were again discriminated against by a railroad union which did not permit them to work diesel engines replacing steam power. The District Court struck down this discrimination, saying:

"We are dealing here with the law regulating the duties of an agent toward his principal. No one is compelled or required to undertake an agency, but one who voluntarily assumes the task owes the duty of acting in the utmost good faith toward his principal. An agent is a fiduciary. If the principal is a group of individuals, this obligation extends to each member of the group. The agent is bound to represent the interest of each member of the group fairly and with equal zeal. He may not neglect some of the members, prefer some as against others, or discriminate among them. He may not advance the interests of some to

the prejudice of others. This is implicit in the fiduciary relationship that exists between every agent and his principal, be that principal a single individual or a group of individuals.

"Applying these general principles to the situation presented in this case, the Brotherhood was under no obligation to become a bargaining agent for the employees within its craft. Having sought to do so, and having been elected to that position of trust, the Brotherhood is in duty bound to represent fairly not only its own membership, but all the employees in whose behalf it has authority to bargain. The Brotherhood must advance equally and in good faith the interests of every individual fireman whom they represent, without preference or discrimination among them. The only permissible distinctions may be those based on seniority, efficiency, reliability, aptitude and similar considerations bearing on the quality of services rendered by the employees. No line may be drawn arbitrarily on any other basis."

Graham v. Southern Ry. Co., 74 Fed. Supp. 663, 664, 665.

In *Berts v. Easley, supra,* the negro workmen sought an injunction against their exclusive bargaining agency under the Railway Labor Act restraining the officers of the union from excluding them from coparticipation with the white employees in the affairs of the union as full members. The Supreme Court of Kansas reversed the judgment of the trial court in sustaining the demurrer, saying:

"In the light of the history and purpose of the Act, as construed in many decisions, the trial court's view that the acts complained of are solely those of 'a private association of individuals' is wholly untenable.

The acts complained of are those of an organization acting as an agency created and functioning under provisions of Federal law. This being true, it is unnecessary to consider appellees' contention that the Fifth Amendment is not here applicable because it relates only to action by the Federal government and not to acts of private persons. Nor do we need to inquire whether appellees' statement as to the operation of the Fifth Amendment is too broadly stated. In any event the constitutional guaranties of due process, whether under the Federal or state constitutions, are to be liberally construed to effectuate their purposes, and are a restraint not only upon persons holding positions specifically classed as executive, legislative or judicial, but upon all administrative and ministerial officials who act under governmental authority. 16 C. J. S., Constitutional Law, §568, pp. 1148, 1149, and cases cited Note 61. While claiming and exercising rights incident to its designation as bargaining agent, the defendant union cannot at the same time avoid the responsibilities that attach to such statutory status.

* * * * * * * *

"It is urged, however, that since membership in the union is voluntary and not compulsory, the petitioners have no right to complain about limitations placed upon membership under the constitution and by-laws of the union. The argument is specious and unrealistic. Note might here be taken of the allegation that in soliciting members, prior to organization of the local lodge, the organizer assured the plaintiffs that all members would have equal rights and privileges. But passing that, we come to a more fundamental matter. This court cannot be blind to present-day realities affecting labor in large industrial plants.

> The individual workman cannot just 'go it alone.' Every person with an understanding of mass production and other features of modern industry long ago recognized the necessity of collective bargaining by labor representatives, freely chosen, if human rights are to be adequately safeguarded. In the Railway Labor Act, Congress gave clear and firm recognition to this necessity. This liberal and enlightened view having been written into the statute, it must follow that a union acting as the exclusive bargaining agent under the law, for all employees, cannot act arbitrarily, cannot deny equality of privilege, to individuals or minority groups merely because membership in the organization is voluntary. To hold otherwise would do violence to basic principles of our American system."
>
> *Betts v. Easley,* 161 Kan. 459, 169 P. 2d 831, 166 A. L. R. 342, 350, 351.

In *James v. Marinship, supra,* and *Williams v. International Brotherhood, supra,* the California Supreme Court in carefully considered opinions has set forth the duties of the collective bargaining agency. Not even a contract between an employer and a union whereby certain individual employees are excluded from its benefits is valid under the National Labor Relations Act. *(International Union v. J. I. Case Co., supra.)* The Court in that case held a contract invalid between a union and an employer where there was reserved to employees not members of the union a right to deal individually with the company. The Court said:

> " 'Exclusive representatives' for the purpose of collective bargaining under the Act means the sole and exclusive bargaining agency of all the employees it

represents for the purpose of bargaining as to rates of pay, wages, hours of employment, or other conditions of employment.

* * * * * * * *

"The company cannot by contract destroy the status of an exclusive bargaining agency created by statute. The terms of the contract being in direct conflict with the statute, the statute governs, and the contract is of no effect."

International Union v. J. I. Case Co., 250 Wis. 63, 26 N. W. 2d 305, 170 A. L. R. 933, 939.

The appellant had numerous offers of employment and was employed for three motion picture productions as first cameraman. He has applied for membership in the appellee unions and has designated them as his exclusive bargaining representatives under the applications. The appellee unions, by virtue of statute, are his exclusive bargaining agents on wages, hours and working conditions. It is the contention of appellant that the unions, in preventing him from working and refusing him membership, have violated their duty to him under the following principles: "For the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights." *(Steele v. Louisville and N. R. Co., supra.)* The statute "does require the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith." *(Steele v. Louisville and*

N. R. Co., supra.) "It is the federal statute which condemns as unlawful the Brotherhood's conduct." *(Tunstall v. Brotherhood of Locomotive Firemen, supra.)* "By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially. Otherwise, employees who are not members of a selected union at the time it is chosen by the majority would be left without adequate representation." *(Wallace Corp. v. N. L. R. B., supra.)* "No reason occurs to us why an organization which has used its power as bargaining agent in violation of the rights of those for whom it undertakes to bargain, and has thereby inflicted injury upon one of those whom it professes to represent, should not respond in damages for the injury so inflicted." *(Brotherhood of Locomotive Firemen v. Tunstall, supra.)* "An agent is a fiduciary. If the principal is a group of individuals, this obligation extends to each member of the group." *(Graham v. Southern Ry. Co., supra.)* "The individual workman cannot just 'go it alone.' Every person with an understanding of mass production and other features of modern industry long ago recognized the necessity of collective bargaining by labor representatives, freely chosen, if human rights are to be adequately safeguarded." *(Betts v. Easley, supra.)*

It is therefore under these principles that appellant asks the Federal Court to take jurisdiction of this controversy with appellee unions.

The Federal District Court had jurisdiction of this case under 28 U. S. C. A. 41 (1) (now 28 U. S. C. A. 1331) (Appendix E, p. 12), where the matter in controversy exceeds $3,000.00 and arises under the Constitution, laws or treaties of the United States, as well as under former

28 U. S. C. A. 41 (8) (now 28 U. S. C. A. 1337), which gives jurisdiction to proceedings arising under any law regulating commerce.

Tunstall v. Brotherhood of Locomotive Firemen, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187.

There is no allegation in the complaint and appellant does not claim that there is any jurisdiction based on the amount in controversy and diversity of citizenship. So far as this subpoint in his argument is concerned, he relies wholly on jurisdiction of the District Court under the laws of the United States and the National Labor Relations Act, being an Act of Congress regulating commerce.

B. Appellant, a Citizen of the Republic of Poland, Was, by the Treaty Between the United States and Poland of Friendship, etc., Guaranteed Certain Rights Denied Him by Appellees.

Under the decided cases, the treaty between the United States and Poland of Friendship, Commerce and Consular Rights (Appendix C, p. 4) guaranteed to appellant the rights accorded nationals of Poland under that treaty. These rights, among others, were "to engage in * * * commercial work of every kind; * * * to employ agents of their choice; and generally * * * to enjoy all of the foregoing privileges and to do anything incidental to or necessary for the enjoyment of those privileges, upon the same terms as nationals of the State of residence * * *. Their property shall not be taken without due process of law * * *. The nationals * * * shall enjoy * * * such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the organization of

and participation in limited liability and other corporations and associations, for pecuniary profit or otherwise, * * *." (Appendix C, p. 4.)

Under similar treaties between the United States and other countries, the Supreme Court has held without any question as to whether or not treaties are self-executing, that the nationals of the other countries were entitled to work without restraint by state action.

Yick Wo. v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220;

Truax v. Raich, 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131.

An excellent exposition of the established principles concerning treaties is found in *Z. & F. Assets Realization Corporation v. Hull* (D. C. App.), 114 F. 2d 464 (affirmed 311 U. S. 470, 61 S. Ct. 351, 85 L. Ed. 288):

> "A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress. But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country. An illustration of this character is found in treaties, which regulate the mutual rights of citizens and sub-

jects of the contracting nations in regard to rights of property by descent or inheritance, when the individuals concerned are aliens. The Constitution of the United States places such provisions as these in the same category as other laws of Congress by its declaration that 'this Constitution and the laws made in pursuance thereof, and all treaties made or which shall be made under authority of the United States, shall be the supreme law of the land.' A treaty, then, is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute."

Z. & F. Assets Realization Corporation v. Hull (D. C. App.), 114 F. 2d 464, 470, 471.

The principles laid down by the Court in the *Z. & F. Assets* case have been established over a long period of time.

Edye v. Robertson, 112 U. S. 580, 5 S. Ct. 247, 28 L. Ed. 798;

Foster v. Neilson, 2 Pet. 253, 314, 7 L. Ed. 415, 435;

U. S. v. Percheman, 7 Pet. 51, 8 L. Ed. 604;

The Peggy, 1 Cranch 103, 2 L. Ed. 49;

U. S. v. 43 Gallons Whisky, 93 U. S. 188, 23 L. Ed. 846;

Indemnity Ins. Co. v. Pan Am. Airways (D. C. N. Y.), 58 Fed. Supp. 338;

Holden v. Joy, 17 Wall. 211, 21 L. Ed. 523, 535;

Hines v. Davidowitz, 312 U. S. 52, 61 S. Ct. 399, 85 L. Ed. 581;

Valentine v. U. S., 299 U. S. 5, 57 S. Ct. 100, 81 L. Ed. 5;

King Features Syndicate v. Valley Broadcasting Co. (D. C. Tex.), 43 Fed. Supp. 137;

Cook v. U. S., 288 U. S. 102, 53 S. Ct. 305, 77 L. Ed. 641;

Bacardi Corp. v. Domenech, 311 U. S. 150, 61 S. Ct. 219, 85 L. Ed. 98.

Mr. Chief Justice Marshall in *Foster v. Neilson, supra,* said:

> "Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an Act of the Legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act—the treaty addresses itself to the political, not the judicial department; and the Legislature must execute the contract before it can become a rule for the court."
>
> *Foster v. Neilson,* 2 Pet. 253, 314, 7 L. Ed. 415, 435.

In *Asakura v. Seattle,* 265 U. S. 332, 44 S. Ct. 515, 68 L. Ed. 1041, the Court held that the treaty with Japan containing similar provisions as the Polish Treaty was self-executing and that an ordinance limiting the right of pawnbrokers to carry on business to persons who were citizens of the United States was void as a violation of the treaty with Japan.

Special rights of a person who has filed his declaration to become a citizen are considered in *Terrace v. Thompson*, 263 U. S. 197, 220, 68 L. Ed. 255, 276, 44 S. Ct. 15.

It is apparent under the cases above cited that appellant, if deemed to have no special rights as one who had filed his declaration to become a citizen, is entitled up to the time when he became a citizen, to rely upon the Polish Treaty which was self-executing and under which he was entitled to engage in commercial work, to appoint agents, to have the equal protection of the laws, and to join associations. Therefore, when the appellees, as exclusive bargaining agency under the National Labor Relations Act, deny him these rights, this Court has jurisdiction under 28 U. S. C. A. 41 (17) (now 28 U. S. C. A. 1350) (Appendix E, p. 14), which permits an alien to file an action in the Federal Courts for a tort arising out of a treaty as well as under 28 U. S. C. A. 41 (1), now 28 U. S. C. 1331.

C. The Appellant Claims Under Rights Guaranteed by the United Nations Charter.

Appellees in the course of their brief in the District Court set forth an ultimate statement concerning the fundamental rights of the appellant, which we take the privilege of quoting at this point:

> "That the right to follow any of the common occupations of life and to pursue any calling, business or profession one may choose is a property right to be guarded by the proper Courts as zealously as any other form of property, that labor is property and

> that the laborer has the same right to sell his labor and to contract with reference thereto as any other property owner, cannot be questioned. Such rights are natural, fundamental, inalienable rights; they exist in all free governments."

Appellees, of course, went on to state that these rights were not protected by the Constitution of the United States or any statute or law of the United States. However, they neglected to consider the United Nations Charter. These rights which appellees say "exist in all free governments" are also guaranteed by the Constitution of the United States, as we will subsequently point out under Point III. The United Nations Charter (Appendix D, p. 8) uses almost the identical words of the appellee unions as above set forth. In the Preamble the peoples of the United Nations reaffirm their faith in "fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small; * * *" The purposes of the United Nations are to achieve international cooperation in "promoting and encouraging respect for human rights and for fundamental freedoms for all; * * *" (Chapter I, Article 1, Paragraph 3.) Article 2 provides that members shall fulfill the obligations assumed by them in accordance with the purposes stated in Article 1, and Article 55 again reemphasizes these principles which, under Article 56, members are obliged to take joint and separate action to achieve.

While the Charter of the United Nations was only adopted in 1945, nevertheless four Justices of the Supreme

Court in the *Alien Land Law* case have concluded that it is applicable to the internal affairs of the United States.

> *Oyama v. State of California,* 332 U. S. 633, 68 S. Ct. 269 (the *Opinion of Mr. Justice Black,* 68 S. Ct. at 277; the *Opinion of Mr. Justice Murphy,* 68 S. Ct. at 288).

Mr. Justice Black said:

> "There are additional reasons now why that law stands as an obstacle to the free accomplishment of our policy in the international field. One of these reasons is that we have recently pledged ourselves to cooperate with the United Nations to 'promote * * * universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.' How can this nation be faithful to this international pledge if state laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?"
>
> *Oyama v. State of California,* 332 U. S. 633, 68 S. Ct. 269, at 277.

Mr. Justice Murphy said:

> "Moreover, this nation has recently pledged itself, through the United Nations Charter, to promote respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion. The Alien Land Law stands as a barrier to the fulfillment of that national pledge. Its inconsistency with the Charter, which has been duly ratified and adopted by the United States, is but one more reason why the statute must be condemned."
>
> *Oyama v. State of California,* 332 U. S. 633, 68 S. Ct. 269, at 288.

Therefore, under the Charter of the United Nations establishing human, fundamental and natural rights which the appellees admit "exist in all free Governments" with the pledge of the United States as contained in the Charter to carry out its purposes, the appellant can rely on the Federal Courts to carry out their constitutional duties to make effective his rights under this treaty.

II.

Under the National Labor Relations Act, Congress Has Clothed Appellees With an Exclusive Franchise, and Under the Act and the Common Law Applicable Thereto, Appellees Have Violated Their Duty Toward Appellant, a Federal Question.

The Supreme Court of the United States has set forth the powers of unions under the National Labor Relations Act. The employer was not only required to negotiate with the union as the exclusive bargaining agency of its employees, but also the Act imposed the "negative duty to treat with no other."

N. L. R. B. v. Jones & Laughlin Steel Corporation, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893.

Not only was the employer to deal with the exclusive bargaining representative, and with no other union, but also he could not make any individual contract with an employee except the original contract of hire.

J. I. Case Co. v. N. L. R. B., 321 U. S. 332, 64 S. Ct. 576, 88 L. Ed. 762.

Under these decisions the individual or minority group can make no contract for themselves, but must accede to the will of the statutory representatives of the majority.

This power of exclusive representation on the part of the unions is in the nature of an exclusive franchise or monopoly which has been granted under governmental authority. Therefore, under this exclusive franchise, the appellee unions must treat all without discrimination in accordance with the long established principles of common law.

Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77;

Stafford v. Wallace, 258 U. S. 495, 66 L. Ed. 735, 42 S. Ct. 397;

U. S. v. Ohio Oil Co., 234 U. S. 548, 58 L. Ed. 1459, 34 S. Ct. 956;

Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394, 425;

The York Manufacturing Co. v. The Illinois Central Railroad, 3 Wall. 107, 112, 18 L. Ed. 170, 172, 70 U. S. 170;

Missouri Pac. Rwy. Co. v. Tucker, 230 U. S. 340, 33 S. Ct. 961, 57 L. Ed. 1507;

4 R. C. L. 565, 9 Am. Jur. 556.

Where unions have obtained monopolies by the closed shop and the closed union, the State Courts have universally regulated those unions if the unions refused to admit qualified persons to membership.

Wilson v. Newspaper & Mail Deliverers' Union, 123 N. J. Eq. 347, 197 Atl. 720;

Carroll v. Local No. 269, I. B. E. W., 133 N. J. Eq. 144, 31 A. 2d 223;

Dorrington v. Manning (Pa. Super.), 4 A. 2d 886;

James v. Marinship, 25 Cal. 2d 721, 155 P. 2d 329, 160 A. L. R. 900;

Swab v. Motion Picture Machine Operators Local No. 159 (Ore.), 109 P. 2d 600;

Restatement, Torts, Secs. 810, 918.

Thus it would appear under the authorities cited above that where a union was acting under its statutory exclusive bargaining agency and where it has obtained a closed shop contract under the permission set forth in Section 8 of the National Labor Relations Act, the union had the duty to admit all persons to its union who were qualified workers and who were able to obtain contracts of employment. It would also appear that the right of such persons to join labor organizations has been granted under Section 7 of the National Labor Relations Act; this is essential in order that persons employed in an industry may take part in the affairs of the union. But, assuming for the purposes of argument that appellant has no right to join the appellee unions, nevertheless, the appellees acting as the exclusive bargaining agency for all first cameramen, including appellant, should have made provision whereby appellant could work without membership in the union, which was required of them as his designated representative. Finally the appellee acting under their exclusive franchise granted to them by the Congress at least owed the duty to the appellant not to interfere with his working as first cameraman.

III.

If, Acting Under Congressional Authority, Appellees Have the Right to Prevent Appellant From Entering Into a Contract of Hire, Then Grave Questions of the Constitutionality of the National Labor Relations Act Arise, a Federal Question.

The Fifth and Fourteenth Amendments to the Constitution of the United States provide that no person shall be deprived of life, liberty or property without due process of law, and restrain respectively the State and Federal Governments and their agencies from any violations of the rights guaranteed by these Amendments to the Constitution.

Appellant says that the National Labor Relations Act cannot be construed to take away his right to enter into a contract of hire, the only privilege left to him under that Act (*J. I. Case Co. v. N. L. R. B.,* 321 U. S. 332, 64 S. Ct. 576, 88 L. Ed. 762); that appellees, either as a Congressionally clothed legislative body or functioning under the Congressional grant of an exclusive franchise, or as statutory agent, cannot take away this right of the appellant. Furthermore, there is the Constitutional duty of the Federal Courts to protect appellant in his right to enter into a contract of hire under the implications of the *Race Restriction Cases,* 334 U. S. 1, 68 S. Ct. 836.

Whether appellant be considered an alien, or having a special status as one who has filed his declaration to become a citizen, or as a white citizen, his rights are protected under the Fifth Amendment to the Constitution.

Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220;

Truax v. Raich, 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131;

Buchanan v. Warley, 245 U. S. 60, 38 S. Ct. 16, 62 L. Ed. 149.

It is immaterial to appellant whether it be determined that his liberty *or* his property has been taken without due process, or whether the Fifth Amendment be construed as guaranteeing him a right to work, a right to enter into a contract, or a right to earn a living. All he desires is a protection from the unlawful interference of others of the right to accept an offer of employment. The Supreme Court and our State Courts have construed the Fifth and Fourteenth Amendments by upholding this right of the appellant.

Yick Wo v. Hopkins, supra;

Truax v. Raich, supra;

Mitchell v. Hitchman Coal and Coke Co. (C. C. A. 4), 214 Fed. 685, 699 (reversed on other grounds, 245 U. S. 229, 38 S. Ct. 65, 62 L. Ed. 260);

Adams v. Tanner, 244 U. S. 590, 37 S. Ct. 662, 61 L. Ed. 1336, L. R. A. 1917F 1163, Ann. Cas. 1917D 973;

Allgeyer v. Louisiana, 165 U. S. 578, 17 S. Ct. 427, 41 L. Ed. 832;

Chicago B. & Q. R. Co. v. McGuire, 219 U. S. 549, 31 S. Ct. 259, 55 L. Ed. 328;

Booth v. Illinois, 184 U. S. 425, 22 S. Ct. 425, 46 L. Ed. 623.

See:

West Coast Hotel Co. v. Parrish, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703;

Bautista v. Jones, 25 Cal. 2d 746, 155 P. 2d 343;

Betts v. Easley, 161 Kans. 459, 169 P. 2d 831, 166 A. L. R. 342;

DeMille v. A. F. R. A., 31 Cal. 2d 139 (Cert. denied by U. S. Supreme Court);

Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394, 425.

In the *Yick Wo* case, *supra,* the Court said:

"For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220, 226.

And so in *Truax v. Raich, supra:*

"It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure."

Truax v. Raich, 239 U. S. 33, 41, 36 S. Ct. 7, 60 L. Ed. 131, 135.

In *Adams v. Tanner, supra,* an initiative measure of the State of Washington prohibited employment agencies from charging any fees and it was held a taking without due process. Opinion by Mr. Justice McReynolds:

" 'You take my house when you do take the prop that doth sustain my house; you take my life when you take the means whereby I live.' " (Shylock—'Merchants of Venice' Act IV, Scene I, line 376.)

Adams v. Tanner, 244 U. S. 590, 593, 37 S. Ct. 662, 61 L. Ed. 1336, 1342.

In *Allgeyer v. Louisiana, supra,* the Court said:

> "The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."
>
> *Allgeyer v. Louisiana,* 165 U. S. 578, 589, 17 S. Ct. 427, 41 L. Ed. 832, 835.

The Court said in *Chicago B. & Q. R. Co. v. McGuire, supra:*

> "Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community."
>
> *Chicago B. & Q. R. Co. v. McGuire,* 219 U. S. 549, 567, 31 S. Ct. 259, 55 L. Ed. 328, 338.

In *West Coast Hotel Co. v. Parrish, supra,* Mr. Chief Justice Hughes said:

> "The constitutional provision invoked is the due process clause of the Fourteenth Amendment governing the States, as the due process clause invoked in the Adkins Case governed Congress. In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of

liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguard is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

West Coast Hotel Co. v. Parrish, 300 U. S. 379, 391, 57 S. Ct. 578, 81 L. Ed. 703, 708.

And in *Bautista v. Jones, supra,* the Court said:

"The right to work, either in employment or independent business, is fundamental and, no doubt, enjoys the protection of the personal liberty guarantee of the Fourteenth Amendment to the federal Constitution, as well as the more specific provisions of our state Constitution. (Cal. Const., art. I, §§1, 13; see *Suckow v. Alderson,* 182 Cal. 247 (187 P. 965); *Angelopulos v. Bottorff,* 76 Cal. App. 621 (245 P. 447).) But this right, like others equally fundamental, is not absolute. It is safeguarded from legislative action which discriminates against a person or class of persons in respect of opportunities to obtain work or enter into business (*Yick Wo v. Hopkins,* 118 U. S. 356 (6 S. Ct. 1064, 30 L. Ed. 220); *Abe v. Fish & Game Commission,* 9 Cal. App. 2d 300 (49 P. 2d 608)); and it is also protected in some degree

against arbitrary action by private organizations, including employers and labor unions. (*James v. Marinship Corp., supra.*)"

Bautista v. Jones, 25 Cal. 2d 746, 749, 155 P. 2d 343.

Mr. Justice Swayne in his dissenting opinion in the *Slaughter House* cases, *supra,* has aptly expressed what the plaintiff is attempting to say in this case:

"Life, liberty and property are forbidden to be taken 'without due process of law,' and 'equal protection of the laws,' is guaranteed to all. Life is the gift of God, and the right to preserve it is the most sacred of the rights of man. Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny. Property is everything which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies to a large extent at the foundation of most other forms of property, and of all solid individual and national prosperity."

Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394 at page 425.

Therefore if, under the National Labor Relations Act the appellees can take away appellant's right to enter into a contract of employment there must be serious doubts as to the constitutionality of this statute.

IV.

Appellant Claims Rights Under the National Labor Relations Act, the Statutes, Treaties and Laws of the United States; the District Court Has Jurisdiction to Determine Whether or Not Appellant Has Any Rights Under Such Laws.

Under the preceding points of law the appellant has relied on rights under Section 7 of the National Labor Relations Act, on the duties of the appellee unions as exclusive bargaining representatives under the same Act, rights claimed under the Treaty with Poland and the Charter of the United Nations, the common law rights against arbitrary action by the appellee unions, holders of an exclusive franchise under the Federal Government, and the Constitution of the United States.

As stated earlier in this brief, the only question before this Court is whether these claims of Federal rights are substantial, and whether or not the appellant can ultimately establish rights in his favor under these laws of the United States merely goes to the merits of the case and is not involved in this appeal.

This principle was reiterated in the case of *American Federation of Labor v. Watson,* 327 U. S. 582, 66 S. Ct. 761, 90 L. Ed. 873, where Mr. Justice Douglas stated:

> "For it is the view of a majority of the Court that jurisdiction is found in Sec. 24 (8) of the Judicial Code, 28 U. S. C. Sec. 41 (8), 28 U. S. C. A. Sec. 41 (8), which grants the federal district courts jurisdiction of all 'suits and proceedings arising under any law regulating commerce.' As we have said, the bill alleges a conflict between the Florida law and the National Labor Relations Act. The theory of the bill is that labor unions, certified as collective bargaining

representatives of employees under that Act, are granted as a matter of federal law the right to use the closed-shop agreement or, alternatively, that the right of collective bargaining granted by that Act includes the right to bargain collectively for a closed shop. Whether that claim is correct is a question which goes to the merits. It is, however, a substantial one. And since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court conclude that a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce.' *Cf. Mulford v. Smith,* 307 U. S. 38, 46, 59 S. Ct. 648, 651, 83 L. Ed. 1092; *Peyton v. Railway Express Agency,* 316 U. S. 350, 62 S. Ct. 1171, 86 L. Ed. 1525; *Parker v. Brown,* 317 U. S. 341, 349, 63 S. Ct. 307, 312, 87 L. Ed. 315; *Tunstall v. Brotherhood,* 323 U. S. 210, 213, 65 S. Ct. 235, 237."

American Federation of Labor v. Watson, 327 U. S. 582, at 591, 66 S. Ct. 761, at 765; 90 L. Ed. 873.

The only question is whether appellant relies on direct rights guaranteed by Federal law, or merely indirect and derivative rights.

Gulley v. First National Bank, 299 U. S. 109, 57 S. Ct. 96, 81 L. Ed. 70.

The silence of Congress as to judicial review which is not found in the Act itself is

"not to be construed as a denial of authority to the aggrieved person to seek appropriate relief in the federal courts in the exercise of their general jurisdiction."

Stark v. Wickard, 321 U. S. 288, 309, 64 S. Ct. 559, 571, 88 L. Ed. 733.

V.

Appellant Is an Employee as Defined by the National Labor Relations Act; Has Been Employed as First Cameraman and Has Had Offers of Employment. Appellees Are Estopped From Claiming Appellant Is Not an Employee.

Appellant was a first cameraman for three different employers in the motion picture industry and thereby became a member of the labor pool for first cameramen in that industry. The National Labor Relations Board on many occasions has recognized that, as alleged in the complaint, employment in the motion picture industry is often of an intermittent nature because persons are hired only for the duration of a particular production. This fact was recognized in the certification proceedings for the IATSE, as referred to in paragraph IV of the complaint on file herein and cited as 14 N. L. R. B. 224 [Tr. 6]. The N. L. R. B. did not require as a condition of eligibility that persons be employed on a particular date, which is its usual practice, but ordered that persons working so many days in a year were eligible to vote. Furthermore, Section 2 of the Act provides that the term, "employee" shall include "any employee and shall not be limited to the employees of a particular employer, * * *."

The National Labor Relations Board has also held that free-lance artists are employed within the meaning of the Act and their status is the same as that of employees regularly employed.

> *K. M. O. X. Broadcasting Station,* 10 N. L. R. B. 479.

This principle that where an employee has entered the labor pool and been employed in an industry in which the union is the exclusive bargaining agency certified for

many employers, particularly where employment is intermittent, is in accord with the principles established by the Supreme Court that the National Labor Relations Act contains a broad social program for the benefit of workers as that term is understood, and rights guaranteed thereunder are not limited to the technical relationship of employer-employee, as construed by the law Courts.

Phelps Dodge Corp. v. N. L. R. B., 313 U. S. 177, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A. L. R. 1217;

N. L. R. B. v. Hearst Publications, 322 U. S. 111, 64 S. Ct. 851, 88 L. Ed. 1170.

In the *Phelps Dodge Corp.* case, *supra,* the employer refused to give employment to certain persons because they were members of the union. The order of the National Labor Relations Board which required such persons to be placed on the job was affirmed by the Supreme Court. Mr. Justice Frankfurter, who delivered the opinion, said:

> "Discrimination against union labor in the hiring of men is a dam to self organization at the source of supply. The effect of such discrimination is not confined to the actual denial of employment; it inevitably operates against the whole idea of the legitimacy of organization. * * *"
>
> "Unlike mathematical symbols, the phrasing of such social legislation as this seldom attains more than approximate precision of definition."
>
> *Phelps Dodge Corp. v. N. L. R. B.,* 313 U. S. 177, 185, 61 S. Ct. 845, 848, 85 L. Ed. 1271.

In *N. L. R. B. v. Hearst Publications, supra,* the Supreme Court thrust aside the employer's contention that newsboys were independent contractors and not within the coverage of the Act, saying:

> "Congress, on the one hand, was not thinking solely of the immediate technical relation of employer and employee. * * *"
>
> "Congress was not seeking to solve the nationally harassing problems with which the statute deals by solutions only partially effective. It rather sought to find a broad solution, one that would bring industrial peace by substituting, so far as its power could reach, the rights of workers to self-organization and collective bargaining for the industrial strife which prevails where these rights are not effectively established. Yet only partial solutions would be provided if large segments of workers about whose technical legal position such local differences exist should be wholly excluded from coverage by reason of such differences."
>
> *N. L. R. B. v. Hearst Publications,* 322 U. S. 111, 124, 125, 64 S. Ct. 851, 857, 858, 88 L. Ed. 1170.

If further analogy be needed to justify protection for the appellant in this case, the broad program of the National Labor Relations Act should not exclude from its beneficient purposes that person who has one foot in the door of employment and an offer of employment in hand. Appellant certainly has been ever since arrival, a "prospective employee." Courts have held that in the absence of any statute an employee who has struck and whose employer has attempted to terminate the relation of employment, is a "striking employee."

"We believe that *in the absence of statute* the relationship of employer and employee is not completely terminated by a strike, but that a new status arises. The courts have coined a word to describe the situation and have called an employee on strike a 'striking employee.'" (Emphasis ours.)

N. L. R. B. v. Carlisle Lumber Co. (C. C. A. 9), 94 F. 2d 138, 144.

The appellees admit in their Motion to Dismiss that their actions have prevented the plaintiff from being an employee and yet, at the same time in the District Court, attempted to avoid their responsibilities to the appellant by saying that he is not an employee. The appellees are "blowing hot and cold." Throughout our common law it has been one of the foundations of our philosophy of justice that a person cannot take advantage of his own wrong. This is also a rule of the Federal Court in considering the construction and application of a Congressional statute.

"It is a principle of the widest application that equity will not permit one to rely on his own wrongful act, as against those affected by it but who have not participated in it, to support his own asserted legal title or to defeat a remedy which except for his misconduct would not be available."

Deitrick v. Greaney, 309 U. S. 190, 196, 60 S. Ct. 480, 483, 84 L. Ed. 694.

Appellees are in the same position as a common carrier who, when refusing to accept shipment of goods, claims that the person offering the shipment is not a "shipper" because the carrier prevented him from placing his goods on board.

Ohio Tank Car Co. v. Keith Ry. Equipment Co. (C. C. A. 7), 148 F. 2d 4, 7.

Under the definition of "employee" in Section 2 of the National Labor Relations Act and under the construction of that word by the National Labor Relations Board and the Supreme Court, appellant is an employee within the meaning of the Act; if for any reason he is not, the appellees are not the ones to assert it.

Conclusion.

The immigrant comes to the United States with long experience in a highly specialized field. The unions stand at the gate of employment and say "he shall not pass." Since the depths of the depression, when unions were weak and disorganized, the unions have called upon the Government of the United States of America to give them help and aid in organizing the workmen throughout the nation, and they received powerful grants from their Government. The unions are strong. The immigrant is weak. The immigrant has asked the Federal Courts to adjudicate his claim that under the National Labor Relations Act, the Treaty with Poland, the United Nations Charter, and the Constitution of the United States, there reposes in him some legal right against this bar to his earning a living and becoming a worthy citizen of the United States.

Respectfully submitted,

Henry B. Ely,

Attorney for Appellant.

APPENDIX "A."

Constitution of the United States.

Article I.

Section 8.

"The Congress shall have Power * * *

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; * * *"

Article VI.

"* * * and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; * * *"

Fifth Amendment.

"No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment.

"* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *"

APPENDIX "B."

NATIONAL LABOR RELATIONS ACT OF 1935.

Section 1 (29 U. S. C. A. 151):

". . . The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Section 2 (3) (29 U. S. C. A. 152):

"The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, . . ."

Section 7 (29 U. S. C. A. 157):

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 8 (3) (29 U. S. C. A. 158):

". . . *Provided,* That nothing in sections 151-166 of this title or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in sections 151-166 of this title as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective bargaining unit covered by such agreement when made."

Section 9 (a) (29 U. S. C. A. 159):

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: . . ."

APPENDIX "C."

TREATY BETWEEN THE UNITED STATES AND POLAND OF FRIENDSHIP, COMMERCE, CONSULAR RIGHTS; PROCLAIMED JULY 10, 1933; 48 STAT. L. 1507.

The United States of America and the Republic of Poland, desirous of strengthening the bond of peace which happily prevails between them, by arrangements designed to promote friendly intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic and commercial aspirations of the peoples thereof, have resolved to conclude a Treaty of Friendship, Commerce and Consular Rights and for that purpose have appointed as their plenipotentiaries:

The President of the United States of America, Henry L. Stimson, Secretary of State of the United States of America, and

The President of the Republic of Poland, Tytus Filipowicz, Ambassador Extraordinary and Plenipotentiary of Poland in Washington,

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

Article I. The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind; to carry on every

form of commercial activity which is not forbidden by the local law; to own, erect, or lease and occupy appropriate buildings and to lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice; and generally the said nationals shall be permitted, upon submitting themselves to all local laws and regulations duly established, to enjoy all of the foregoing privileges and to do anything incidental to or necessary for the enjoyment of those privileges, upon the same terms as nationals of the State of residence, except as otherwise provided by laws of either High Contracting Party in force at the time of the signature of this Treaty. In so far as the laws of either High Contracting Party in force at the time of the signature of this Treaty do not permit nationals of the other party to enjoy any of the foregoing privileges upon the same terms as the nationals of the State of residence, they shall enjoy, on condition of reciprocity, as favorable treatment as nationals of the most favored nation.

The nationals of either High Contracting Party within the territories of the other shall not be subjected to the payment of any internal charges or taxes other or higher than those that are exacted of and paid by its nationals.

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, in all degrees of jurisdiction established by law.

The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

Nothing contained in this Treaty shall be construed to affect existing statutes of either of the High Contracting Parties in relation to emigration or to immigration or the right of either of the High Contracting Parties to enact such statutes, provided, however, that nothing in this paragraph shall prevent the nationals of either High Contracting Party from entering, traveling and residing in the territories of the other party in order to carry on international trade or to engage in any commercial activity related to or connected with the conduct of international trade on the same terms as nationals of the most favored nation.

Nothing contained in this Treaty is to be considered as interfering with the right of either party to enact or enforce statutes concerning the protection of national labor.

* * * * * * * * *

Article XII. The nationals of either High Contracting Party shall enjoy within the territories of the other, reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State

with respect to the organization of and participation in limited liability and other corporations and associations, for pecuniary profit or otherwise, including the rights of promotion, incorporation, purchase and ownership and sale of shares and the holding of executive or official positions therein. In the exercise of the foregoing rights and with respect to the regulation or procedure concerning the organization or conduct of such corporations or associations, such nationals shall be subjected to no conditions less favorable than those which have been or may hereafter be imposed upon the nationals of the most favored nation. The rights of any of such corporations or associations as may be organized or controlled or participated in by the nationals of either High Contracting Party within the territories of the other to exercise any of their functions therein, shall be governed by the laws and regulations, National, State or Provincial, which are in force or may hereafter be established within the territories of the party wherein they propose to engage in business.

APPENDIX "D."

CHARTER OF THE UNITED NATIONS.
59 Stat. L. 1046.

PREAMBLE.

We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind; and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small; and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained; and

to promote social progress and better standards of life in larger freedom; and for these ends to practice tolerance and live together in peace with one another as good neighbors; and

to unite our strength to maintain international peace and security; and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest; and

to employ international machinery for the promotion of the economic and social advancement of all peoples; have resolved to combined our efforts to accomplish these aims.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Chapter I. Purposes and Principles.

Article 1.

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of agression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2.

The Organization and its Members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following Principles:

1. The Organization is based on the principles of the sovereign equality of all its members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Article 55.

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. Higher standards of living, full employment, and conditions of economic and social progress and development;

b. Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56.

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

APPENDIX "E."

(Old) 28 U. S. C. A. 41 (1):

"First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, . . ."

(New) 28 U. S. C. 1331:

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

(Old) 28 U. S. C. A. 41 (8):

"Of all suits and proceedings arising under any law regulating commerce."

(New) 28 U. S. C. 1337:

"The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

(Old) 28 U. S. C. A. 41 (12):

"Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of

any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Title 8."

(Old) 28 U. S. C. A. 41 (13):

"Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section 47 of Title 8, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act."

(Old) 28 U. S. C. A. 41 (14):

"Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

(New) 28 U. S. C. 1343:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Title 8;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 47 of Title 8 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

(OLD) 28 U. S. C. A. 41 (17):

"Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States."

(NEW) 28 U. S. C. 1350:

"The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

(OLD) 28 U. S. C. A. 41 (23):

"Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies."

(NEW) 28 U. S. C. 1337:

(See above).

APPENDIX "F."

SECTIONS OF U. S. C. A.

8 U. S. C. A. 41:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

8 U. S. C. A. 43:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress."

8 U. S. C. A. 47 (3):

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

APPENDIX "G."

SECTIONS OF LABOR CODE, STATE OF CALIFORNIA.

§921. *Promise as to joining, remaining in, or withdrawing from labor organizations. Relief:*

[Promises contrary to public policy.] Every promise made after August 21, 1933, between any employee or prospective employee and his employer, prospective employer or any other person is contrary to public policy if either party thereto promises any of the following:

(a) To join or to remain a member of a labor organization or to join or remain a member of an employer organization,

(b) Not to join or not to remain a member of a labor organization or of an employer organization.

(c) To withdraw from an employment relation in the event that he joins or remains a member of a labor organization or of an employer organization.

[Promise no basis for relief.] Such promise shall not afford any basis for the granting of legal or equitable relief by any court against a party to such promise, or against any other persons who advise, urge, or induce, without fraud or violence or threat thereof, either party thereto to act in disregard of such promise.

§922. *Coercing agreement not to join labor organization. Misdemeanor:*

Any person or agent or officer thereof who coerces or compels any person to enter into an agreement, written or verbal, not to join or become a member of any labor organization, as a condition of securing employment or continuing in the employment of any such person is guilty of a misdemeanor.

§923. *Public policy as to labor organizations.*

In the interpretation and application of this chapter, the public policy of this State is declared as follows:

Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

APPENDIX "H."

SECTION OF LABOR MANAGEMENT RELATIONS ACT, 1947.

Section 301 (c):

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

APPENDIX "I."

15 U. S. C. A. 15.

Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. Oct. 15, 1914, c. 323 §4, 38 Stat. 731.